

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DENNIS TAYLOR, et al.,)
)
Plaintiffs,)
) Case No. 4:14-cv-00293-JED-TLW
v.)
)
MICHELIN NORTH AMERICA, INC., et al.,)
)
Defendants.)

DEFENDANT MICHELIN NORTH AMERICA, INC.’S
ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFFS’ SECOND AMENDED COMPLAINT

Defendant Michelin North America, Inc. (“Michelin”) responds to Plaintiffs’ Second Amended Complaint as follows:

I. Introduction

1. Michelin denies the allegations in this paragraph.
2. Michelin denies the allegations in this paragraph.

II. Factual Statement

3. Michelin denies the allegations in this paragraph.
4. Michelin denies the allegations in this paragraph.

III. Jurisdiction

5. Michelin admits that federal jurisdiction is proper in this case. Except as expressly admitted, Michelin denies the allegations in this paragraph.

IV. Venue

6. Michelin admits that venue is proper in the U.S. District Court in the Northern District of Oklahoma in this case. Except as expressly admitted, Michelin denies the allegations in this paragraph.

V. Parties

7. Michelin is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

8. Michelin is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

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90. Michelin is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

91. Michelin is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

92. Michelin admits the allegations in this paragraph.

93. Upon information and belief, Michelin admits the allegations in this paragraph.

94. Michelin admits that Plaintiffs Dennis Taylor, Sean McDonald, Tika McDonald, and Niesha Fields bring this action both individually and on behalf of a class as defined in this paragraph, but denies that Oklahoma recognizes the existence of a remedy of medical monitoring, denies that this action is appropriate or has any merit, and denies that the proposed

class can be appropriately certified in this case. Except as expressly admitted, Michelin denies the allegations in this paragraph.

95. Michelin denies the allegations in this paragraph.

96. Michelin admits that Plaintiffs Dennis Taylor, Sean McDonald, Tika McDonald, and Niesha Fields seek to exclude the entities and individuals identified in this paragraph from their proposed class, but denies that Oklahoma recognizes the existence of a remedy of medical monitoring, denies that this action is appropriate or has any merit, and denies that the proposed class can be appropriately certified in this case. Except as expressly admitted, Michelin denies the allegations in this paragraph.

97. This paragraph states legal conclusions to which no response is necessary. To the extent a response is deemed necessary, Michelin admits that this paragraph purports to limit Plaintiffs' claim in this action and that "[t]his action does not seek damages for personal injuries." Further answering, Michelin denies that Oklahoma recognizes the existence of a remedy of medical monitoring damages, denies that this action is appropriate or has any merit, and denies that the proposed class can be appropriately certified in this case. Except as expressly admitted, Michelin denies the allegations in this paragraph.

VI. Plaintiffs' Causes of Action

A. Plaintiffs Invoke the Discovery Rule

98. Michelin denies the allegations in this paragraph.

99. Michelin denies the allegations in this paragraph.

100. Michelin denies the allegations in this paragraph.

101. Michelin is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

102. Michelin is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

103. Michelin is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

104. Michelin is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

B. Count One – Strict Liability, Oklahoma Constitution, Article II § 23

105. Michelin incorporates its responses to Paragraphs 1-104, as if set forth at length herein. Further answering, Michelin denies the allegations in this paragraph.

106. Michelin denies the allegations in this paragraph.

C. Count Two – Nuisance

107. Michelin incorporates its responses to Paragraphs 1-106, as if set forth at length herein. Further answering, Michelin denies the allegations in this paragraph.

108. Michelin denies the allegations in this paragraph.

109. Michelin denies the allegations in this paragraph.

110. Michelin denies the allegations in this paragraph.

111. Michelin denies the allegations in this paragraph.

112. Michelin denies the allegations in this paragraph.

113. Michelin denies the allegations in this paragraph.

114. Michelin denies the allegations in this paragraph.

115. Michelin denies the allegations in this paragraph.

116. Michelin denies the allegations in this paragraph, including all subparts.

117. Michelin denies the allegations in this paragraph.

118. Michelin denies the allegations in this paragraph.

D. Count Three – Trespass

119. Michelin incorporates its responses to Paragraphs 1-118, as if set forth at length herein. Further answering, Michelin denies the allegations in this paragraph.

120. Michelin denies the allegations in this paragraph.

121. Michelin denies the allegations in this paragraph.

122. Michelin denies the allegations in this paragraph.

123. Michelin denies the allegations in this paragraph.

124. Michelin denies the allegations in this paragraph.

125. Michelin denies the allegations in this paragraph.

126. Michelin denies the allegations in this paragraph.

127. Michelin denies the allegations in this paragraph.

128. Michelin denies the allegations in this paragraph.

E. Count Four – Strict Liability for Ultra-Hazardous Activity

129. Michelin incorporates its responses to Paragraphs 1-128, as if set forth at length herein. Further answering, Michelin denies the allegations in this paragraph.

130. Michelin denies the allegations in this paragraph.

F. Count Five – Unjust Enrichment

131. Michelin incorporates its responses to Paragraphs 1-130, as if set forth at length herein. Further answering, Michelin denies the allegations in this paragraph.

132. Michelin denies the allegations in this paragraph.

133. Michelin denies the allegations in this paragraph.

134. Michelin denies the allegations in this paragraph.

135. Michelin denies the allegations in this paragraph.

136. Michelin denies the allegations in this paragraph.

VII. Class Action Allegations

137. Michelin incorporates its responses to Paragraphs 1-136, as if set forth at length herein. Further responding, Michelin admits that Plaintiffs Dennis Taylor, Sean McDonald, Tika McDonald, and Niesha Fields bring this action both individually and on behalf of a class as defined in this paragraph, but denies that Oklahoma recognizes the existence of a remedy of medical monitoring, denies that this action is appropriate or has any merit, and denies that the proposed class can be appropriately certified in this case. Michelin further admits that Plaintiffs purport to bring this action seeking monetary damages and equitable relief, but denies that Plaintiffs or any proposed class members are entitled to such relief. Except as expressly admitted, Michelin denies the allegations in this paragraph.

138. Michelin denies the allegations in this paragraph.

139. Michelin denies the allegations in this paragraph.

140. Michelin denies the allegations in this paragraph.

141. Michelin denies the allegations in this paragraph, including all subparts.

142. Michelin denies the allegations in this paragraph.

143. Michelin denies the allegations in this paragraph, including all subparts.

144. Michelin denies the allegations in this paragraph, including all subparts.

VIII. Prayer

145. Plaintiffs' Prayer for Relief in this paragraph, including subparts (a) through (i), is not an allegation to which a response is required. Should a response be deemed necessary, Michelin admits that Plaintiffs purport to seek such relief, but denies there is any legal or factual basis for awarding judgment against it or the forms of relief set forth in the Prayer for Relief.

IX. Jury Demand

146. Plaintiffs' demand for a jury trial in this paragraph is not an allegation to which a response is required. Should a response be deemed necessary, Michelin admits that Plaintiffs purport to demand a jury trial on all issues so triable. Further answering, Michelin demands a jury trial on all issues so triable.

AFFIRMATIVE AND/OR ADDITIONAL DEFENSES

As and for its separate, distinct, and affirmative or additional defenses to Plaintiffs' Second Amended Complaint, and to each cause of action thereof, Michelin states as follows:

1. Michelin denies all allegations not expressly admitted and specifically reserves all affirmative or other defenses that it may have against the proposed class. It is not necessary at this time for Michelin to delineate such defenses against the proposed class because no class has been certified and all putative class members are not parties to this litigation.

2. Plaintiff's Second Amended Complaint should be dismissed for failure to state a cause of action upon which relief may be granted.

3. The claims of Plaintiffs or some members of the proposed class are barred by the statute of limitations.

4. Plaintiffs' claims are barred under the doctrines of estoppel and/or laches.

5. Plaintiffs' alleged damages, if any, were caused or contributed to by the acts, omission, negligence, recklessness, fault, and/or wrongful conduct of third parties.

6. Plaintiffs' alleged lost use and enjoyment damages cannot exceed the fair market value of their property because the right to use and enjoy property is part of the bundle of rights that is conferred upon the sale of the property and therefore is part of the property's fair market value.

7. To the extent that Plaintiffs cannot show contamination to their own properties, Plaintiffs' recovery is barred by the economic loss doctrine, because Plaintiffs cannot recover in tort for the "stigma" of living in an allegedly contaminated area.

8. The claims of Plaintiffs or some members of the proposed classes are barred by releases or accord and satisfaction.

9. The equitable claims of Plaintiffs or some members of the proposed classes are barred by the doctrine of unclean hands.

10. The alleged damages, if any, of Plaintiffs or some members of the proposed classes were caused or contributed to by their own acts, omissions, negligence, recklessness, fault, and/or wrongful conduct.

11. The alleged injuries, if any, of Plaintiffs or some members of the proposed classes were caused by superseding and/or intervening acts done by persons or entities over which Michelin had no control.

12. Michelin denies the applicability of punitive damages theories under the facts of this litigation, and, in any event, denies that it is so liable under such theories.

13. The imposition of punitive damages would violate Michelin's right to due process under the United States and Oklahoma Constitutions.

14. Plaintiffs and proposed members of the classes are barred from seeking an award of punitive damages that is grossly excessive and violates the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

15. Michelin denies that any of its actions were willful, wanton, malicious, or reckless.

16. Any award of punitive damages against Michelin is barred to the extent that it is inconsistent with the standards and limitations set forth in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), and *Philip Morris USA v. Williams*, 549 U.S. 346 (2007).

17. Imposition of punitive damages against Michelin would constitute a denial of equal protection under the law in violation of the Fifth and Fourteenth Amendments of the United States Constitution in that Michelin's wealth or net worth may be considered by the jury in determining the amount of a punitive damages award.

18. Imposition of punitive damages against Michelin would violate the Due Process and Equal Protection Clauses of the United States Constitution and the Due Process clause of the Oklahoma Constitution because the vague and subjective standards for awarding punitive damages do not provide sufficient notice of the type of conduct or mental state upon which an award of punitive damages could result from Michelin's conduct.

19. Imposition of punitive damages against Michelin would violate the Due Process and Equal Protection Clauses of the United States Constitution, and the Due Process Clause of the Oklahoma Constitution because the jury or factfinder lacks adequate, objective legal standards to guide and limit the jury or factfinder's discretion, and thus an award would be irrational, arbitrary and capricious based on vague and subjective standards.

20. Imposition of punitive damages against Michelin would contravene the Commerce Clause of the United States Constitution in that such an award would constitute an undue and unreasonable burden on interstate commerce.

21. Michelin denies that it owed any duty to warn or other duty to Plaintiffs or members of the proposed classes.

22. Plaintiffs are precluded as a matter of law from seeking injunctive or equitable relief in this private action that would be different from or otherwise conflict with the actions ultimately determined to be appropriate in the Consent Order (97-324) entered into between Michelin and the Oklahoma Department of Environmental Quality on October 10, 1997.

23. Plaintiffs or some members of the proposed class have failed to mitigate damages.

24. Plaintiffs are precluded as a matter of law from recovering medical monitoring damages.

25. There is no certifiable class for any claims or remedies, and Plaintiffs have failed to allege the same.

26. Plaintiffs have incurred no cognizable injury, and Plaintiffs have failed to allege the same.

27. There is no causation attributable to any Defendant, and Plaintiffs have failed to allege any causation attributable to any Defendant.

28. Michelin reserves the right to raise such additional affirmative defenses as may be established during discovery and by the evidence in this case.

WHEREFORE, Michelin prays that the Court determine and adjudge:

- a. that Plaintiffs' Second Amended Complaint be dismissed on its merits;
- b. that Plaintiffs take nothing by their Second Amended Complaint;
- c. that Michelin be awarded its costs, disbursements, and attorneys' fees and expenses incurred herein; and
- d. that Michelin be awarded such other and further relief as the Court deems proper.

Dated: June __, 2016

Respectfully submitted,

By: /s/ Connie M. Bryan

Connie M. Bryan, OBA #13664
McCORMICK & BRYAN, PLLC
3500 S. Boulevard, Suite 10B
Edmond, OK 73013
Phone: (405) 562-6800
Fax: (405) 216-3602
cbryan@mccormickbryan.com

Peter W. Herzog III (pro hac vice)
WHEELER TRIGG O'DONNELL LLP
211 N. Broadway, Suite 2825
St. Louis, MO 63102
Phone: (314) 326-4129
Fax: (303) 244-1879
pherzog@wtotrial.com

Attorneys for Defendant Michelin North
America, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of June, 2016, a true and correct copy of the foregoing was filed via this Court's electronic filing system, which will automatically send notifications to the following:

Benjamin L. Barnes, Esq.
Benjamin L. Barnes, Attorney & Counselor at Law
Centennial Plaza
2575 Kelley Pointe Parkway, Ste. 100
Edmond, OK 73013
bb@bbarneslaw.com

Bradley H. Mallett, Esq.
Taylor, Foster, Mallett, Downs, Ramsey & Russell
400 W. Fourth Street
P.O. Box 309
Claremore, OK 74018
bmallett@soonerlaw.com

Pat Pendley, Esq.
Pendley, Baudin & Coffin
Post Office Drawer 71
24110 Eden Street
Plaquemine, LA 70765
pwpendley@pbclawfirm.com

R. Christopher Cowan, Esq.
Cowan Law Firm
One Meadows Building
5005 Greenville Avenue, Suite 200
Dallas, TX 75206-4034
chris@cowanlaw.net

Counsel for Plaintiffs

/s/ Connie M. Bryan